



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

REGION 8

1595 Wynkoop Street
Denver, CO 80202-1129
Phone 800-227-8917
www.epa.gov/region08

DEC 18 2019

Ref: 8WD-SDU

Mr. Al Homer
Article IC Advocate
P.O. Box 150
Pine Ridge Agency, South Dakota 57770

Re: U.S. Environmental Protection Agency Underground Injection Control Program
Response to August 23, 2019, letter from the Black Hills Sioux Nation Treaty Council

Dear Mr. Homer:

The letter dated August 23, 2019, that you and Floyd Looks for Buffalo Hand sent to the EPA Administrator was forwarded to the EPA Region 8, Underground Injection Control (UIC) Program. I appreciate the information you provided on behalf of the Black Hills Sioux Nation Treaty Council, which among other things quoted the "EPA Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights," which is available online at https://www.epa.gov/sites/production/files/2016-02/documents/tribal_treaty_rights_guidance_for_discussing_tribal_treaty_rights.pdf. That policy:


"provides assistance on consultation with respect to EPA decisions focused on specific geographic areas when tribal treaty rights relating to natural resources may exist in, or treaty-protected resources may rely upon, those areas. In these instances, during consultation with federally recognized tribes (tribes), EPA will seek information and recommendations on tribal treaty rights in accordance with this Guidance. EPA will subsequently consider all relevant information obtained to help ensure that EPA's actions do not conflict with treaty rights, and to help ensure that EPA is fully informed when it seeks to implement its programs and to further protect treaty rights and resources when it has discretion to do so regarding the EPA's commitment to consider and consult with tribes on treaty rights in areas where EPA actions potentially affect reserved rights set aside for tribes under treaties."

As you may be aware, the EPA recently mailed letters to 38 federally recognized tribes, including all Sioux Tribes located within the United States, with historic interest in the Black Hills. Consistent with the EPA policy referenced above, the letters requested tribal consultation on a number of issues, including treaty rights, related to proposed EPA actions at the Dewey-Burdock uranium recovery site near Edgemont, South Dakota. In these letters, the EPA included specific questions for tribes related to treaty rights, including the questions you posed in your August 23, 2019, letter. I have enclosed one of these letters for your reference.

The EPA intends to inquire about treaty rights during tribal consultation meetings and to consider all relevant information received from tribes during the consultation process, including information about potential treaty rights in and around the Dewey-Burdock project area.

If there is any additional information the Black Hills Sioux Nation Treaty Council would like to provide the EPA related to treaty rights, particularly the Fort Laramie Treaties of 1851 and 1868, please feel free to contact Valois Robinson of my staff, who can be reached at (800) 227-8917, extension 312-6276 or (303) 312-6276; by email at robinson.valois@epa.gov or by mail at the above letterhead address. Please include Mail Code: 8WD-SDU in the above address. I have enclosed a location map of the Dewey-Burdock project area for your reference.

Sincerely,



Doug LaMonte
UTC Section Chief

Enclosures (2)



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JUL 08 2019

Ref: 8WD-SDU

Honorable Julian Bear Runner
President
The Oglala Sioux Tribe
P.O. Box 2070
Pine Ridge, South Dakota 57770-2070

Re: U.S. Environmental Protection Agency Underground Injection Control Program
Invitation for Consultation on revised Draft Permits and related actions for the Dewey-Burdock
Uranium Recovery Site near Edgemont, South Dakota

Dear President Bear Runner:

The U.S. Environmental Protection Agency Region 8 Underground Injection Control (UIC) Program would like to consult with you, and any other representatives you would like to invite, on revised Draft Permits for injection wells and an updated draft Environmental Justice Analysis for the proposed Dewey-Burdock uranium in-situ recovery (ISR) site near Edgemont, South Dakota. The EPA anticipates issuing the revised Draft Permits in August 2019.

In March 2017, the EPA UIC Program issued two Draft Permits for Powertech (USA) Inc.: one for Class III injection wells used during the uranium recovery process; the second for deep injection wells for the disposal of treated ISR process waste water. The EPA also issued a draft Environmental Justice Analysis at that time. After considering comments received during the public comment period, the EPA has decided to issue revised Draft Permits, a revised draft Environmental Justice Analysis, a revised Aquifer Exemption Record of Decision and an updated document describing the EPA's plan for compliance with section 106 of the National Historic Preservation Act.

The location of the Dewey-Burdock site is shown in the enclosed Figure 1. For additional information about the proposed Dewey-Burdock site, please see the enclosed page entitled *Background Information on the Proposed Dewey-Burdock Uranium In-Situ Recovery Site* and enclosed Figures 1 through 5.

Environmental Justice Analysis

During consultation, we plan to present information about the revised draft Environmental Justice Analysis, specifically related to the The Oglala Sioux Tribe's interest in the Black Hills as a sacred site. We also welcome any input the Tribe would be willing to offer to assist the EPA in presenting an accurate picture of environmental justice issues related to the Black Hills.

The EPA Tribal Consultation Policy

It is the EPA's policy to consult on a government-to-government basis with federally recognized tribal governments when EPA actions and decisions may affect tribal interests. The EPA views consultation as a process of meaningful communication and coordination between the EPA and tribal officials prior to the EPA taking actions or implementing decisions that may affect tribes. For information about the EPA *Policy on Consultation and Coordination with Indian Tribes* please visit the following website: <https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes>.

The EPA also developed the *Policy on Consultation and Coordination with Indian Tribes: Guidance for Discussing Tribal Treaty Rights* (Treaty Rights guidance) to complement the EPA's general *Policy on Consultation and Coordination with Indian Tribes*. The Treaty Rights guidance provides affirmative steps for the Agency to take during tribal consultations when an EPA action occurs in a specific geographic location and a resource-based treaty right, or an environmental condition necessary to support the resource, may be affected by the EPA's action. The Treaty Rights guidance was developed after nationwide tribal consultation. This guidance document is found at the following website: https://www.epa.gov/tribal/forms/consultation-and-coordination-tribes#treaty_rights.

Consistent with the Treaty Rights guidance, the EPA would also like input from the The Oglala Sioux Tribe on treaty rights related to our revised draft permitting actions. The EPA acknowledges that some tribes have previously provided written public comment stating their position that treaty rights would be impacted by the Draft Permits. Nevertheless, pursuant to the Treaty Rights guidance, EPA seeks input on the following questions:

- (1) Do treaties exist within the project area?
- (2) What treaty rights exist in or what treaty-protected resources rely upon the project area? Among other things, have treaty-based groundwater rights in the project area been recognized by judicial decree or congressional settlement?
- (3) How are treaty rights potentially affected by the revised Draft Permits?
- (4) Any concerns you have related to treaty rights.

The EPA has a separate responsibility under section 106 of the National Historic Preservation Act (NHPA) to consult with tribes that attach religious and cultural significance to historic properties that may be affected by an undertaking. Accordingly, we invite the The Oglala Sioux Tribe to engage in government-to-government consultation under section 106. Wherever appropriate, the EPA attempts to integrate this section 106 consultation with general consultation under our Tribal Consultation Policy. Therefore, we propose the following potential topics for consultation:

- (1) Changes from the first Draft UIC permits to the second Draft UIC permits;
- (2) Any concerns you may have about the proposed Dewey-Burdock project and the UIC permitting actions; and
- (3) Potential historic properties, including those of traditional religious and cultural importance, within the Dewey-Burdock area of potential effect.

We understand that the The Oglala Sioux Tribe may raise issues in consultation that should be kept confidential and nonpublic. During our consultation process, if there is information that you would like to provide, but that you believe should remain confidential, please specifically identify this information during our consultation meeting and we will explore options for keeping the information confidential in accordance with 36 CFR § 800.11(c). As we move forward with the consultation process, please be aware

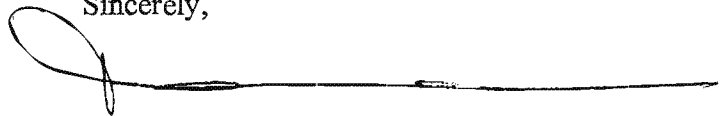
that any information you provide to the EPA in writing will become a part of the public record unless other arrangements are made to maintain confidentiality.

We are requesting a reply from you as to whether the The Oglala Sioux Tribe wishes to consult with the EPA. If you are interested in meeting with the EPA, please reply by August 2, 2019. Consultation requests should be submitted to Valois Robinson of my staff, who can be reached at (800) 227-8917, extension 312-6276 or (303) 312-6276; or by email at robinson.valois@epa.gov. Please include a point of contact for the Tribe so we can keep you informed as the EPA moves forward with this consultation process. ☞

If we do not hear from you by August 2, 2019, we will interpret this to mean that you do not wish to consult with the EPA at this time. The EPA would also welcome the opportunity to consult after the revised Draft Permits are issued to discuss these important issues.

We appreciate the The Oglala Sioux Tribe's prompt attention to this important matter.

Sincerely,

A handwritten signature in black ink, consisting of a large, stylized loop followed by a long horizontal line.

Darcy O'Connor, Director
Water Division

Enclosures (6)

cc: Dalinda Simmons, Acting Environmental Director
Thomas Brings, Tribal Historic Preservation Officer



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Where We Are

FEDERAL LANDS AND INDIAN RESERVATIONS

- Bureau of Indian Affairs
- Bureau of Land Management / Wilderness
- Bureau of Reclamation
- Department of Defense
includes Army Corps of Engineers, etc.
- Fish and Wildlife Service / Wilderness
- Forest Service / Wilderness
- National Park Service / Wilderness

Some small lakes and rivers are not shown, especially in urban areas.



Albers equal area projection

Abbreviations

- IR Indian Reservation
- NF National Forest
- NC National Grassland
- NM National Monument
- NP National Park
- NWR National Wildlife Refuge

Approximate location
of proposed
Dewey-Burdock Site

